IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.20033-M of 2004

Date of Decision: January 31, 2007

Gurninder Singh and another

...Petitioners

VERSUS

State of Punjab & another

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.D.D.Sharma, Advocate,
for the petitioners.

Mr.M.C.Berry, Senior DAG, Punjab,
for the State.

Ms.Ishma Randhawa, Advocate,
for respondent No.2.

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This order will dispose of Criminal Misc.Nos.20033-M of 2004 (Gurninder Singh and another v. State of Punjab and another), 36386-M of 2004 (Amarjit Singh Atwal and others v. State of Punjab and another) and 25309-M of 2004 (Gursharajit Singh and another v. State of Punjab and another). The facts are being taken from Crl.Misc.No.20033-M of 2004.

Being aggrieved against the action of Judicial Magistrate Ist Class in declining to accept the cancellation report and for summoning the petitioners, the present petition under Section 482 Cr.P.C. is filed. It is submitted that the impugned order cannot be sustained as the same is passed on the bare statement made by the complainant and without taking into consideration the relevant material, specially the cancellation report submitted by the investigating agency. The petitioners, who are husband and wife, are son-in-law and daughter of uncle of one Omrik Singh. Omrik Singh married one Sandip Kaur daughter of respondent No.2 (complainant) on 27.2.2000. The petitioners had no concern with this marriage being distantly related to the married couple. On account of dispute/ differences between Omrik Singh and Sandip Kaur, respondent No.2 lodged a complaint against the petitioners and against Gursharan Singh and Kulwinder Singh. The petitioners apparently were roped in because Omrik Singh as well as Sandip Kaur are not staying in India and are residents of England. Investigations followed after registration of the FIR. Finding the same to be false, a cancellation report was submitted before the concerned Magistrate on 25.3.2003. Magistrate issued notice to the complainant, who appeared on 28.4.2003 and made statement that he did not agree with the cancellation report. His statement was recorded and the Magistrate sent notice to the accused-petitioners, thus leading to their summoning. It would be significant to notice that the statement which the complainant made read “stated that I want to pursue my case”. On this basis alone and without considering the cancellation report in any manner, the Magistrate passed the

following order on 24.3.2004 which reads:-

> "Accused has appeared. Let notice to remaining accused be issued for 6.7.2004 on PF."

Immediately thereafter the present petition was filed and this court, while issuing notice of motion, stayed the further proceedings. It was also noticed that the parties to the marriage had in fact divorced and are settled in U.K.

I have heard the counsels for the parties.

The counsel for the petitioners would submit that the impugned order cannot be sustained as the same was passed just on the asking of the complainant and without taking into consideration the other relevant material including the cancellation report. Copy of the cancellation report is placed on record as Annexure P-4. The counsel is not unjustified in saying that the Magistrate was bound to consider the cancellation report filed in this case as per law. Once the investigating agency had filed cancellation report, the court was required to either accept or reject the same. Summoning the accused only on the asking of the complainant that he wanted to pursue his case, as per the counsel, is unsustainable. The State counsel, on the other hand, has pointed out that the present petition was filed when the court was yet to apply its mind and pass appropriate order either accepting or rejecting the cancellation report, which could not be done because of stay granted by this court.

I see substance in the submission made by the counsel for the petitioner. Once the investigating agency had filed a cancellation report, it was for the Magistrate either to accept or reject

the same. This was one of the material before the Magistrate. Though the court would not be bound to accept the cancellation report so submitted before him, yet while summoning the accused, the court is required to take all the material into consideration and cancellation report would be one such material. In Anil Kumar Sah and others Vs. Nagendra Singh, 1991 Crl.L.J.421, it is observed by the Patna High Court that Magistrate, no doubt, is fully competent to dis-agree with and not accept the report of the Investigating Officer but while doing so, he must indicate his reasons in this regard, which must be cogent and legitimate one. Finding that Magistrate had done so without considering the facts found by the Investigating Officer in his report, it was held that such an approach is improper and erroneous. Similarly in the case of Daleep Singh Vs. Smt.Magan, 1996 Cri.L.J.190, it was viewed by the High Court of Rajashan that the Court has to consider the record and then arrive at its own conclusion whether a process should be issued or not and that result of enquiry under Section 202 Cr.P.C., is one such material, which the Magistrate is to take into consideration. Where such a report had accompanied the statements of the complainant and witnesses and while ignoring the same, a cognizance was taken, it was held to be tantamounting to abuse of the process of the Court and the impugned order was termed unsustainable. Though these cases were not where investigation of FIR was involved but that would not make any material difference to the issue of process. It can, thus, be viewed that while issuing process, the court is bound to take into consideration the report of the investigating agency, which apparently has not been done in this case. It is also observed that where this is

not done and process is issued, it may tantamount to abuse of the process of the court. The impugned order, as reproduced above, would clearly show that the cancellation report was not taken into consideration at all. Otherwise also, no reasons are forthcoming in the order, which may indicate any application of mind by the court while summoning the accused.

Accordingly, the impugned order can not be sustained and the same is set-aside. The case is remanded back to the trial court for passing appropriate order in accordance with law. It is made clear that the trial court would be at liberty to proceed with the case from the stage it is pending before it.

The petitions are accordingly allowed in the above terms.

January 31, 2007 (RANJIT SINGH)
ramesh JUDGE